



NO. VLC-S-H-121044
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HOME TRUST COMPANY

PETITIONER

AND:

STEWART EDWARD IRVINE,
CARMEL YOKO RICHTER,
SHERWIN JACK-YEN HO,
OLYMPIA TRUST COMPANY, IN TRUST
JOHN DOE and JANE (Tenants)

RESPONDENTS

NOTICE OF APPLICATION

Name of Applicants: Carmel Yoko Richter and Sherwin Jack-Yen Ho

TO: Home Trust Company, Stewart Edward Irvine
Olympia Trust Company, in Trust

TAKE NOTICE that an application will be made by the applicants to the presiding Master or Judge at the Courthouse at The Law Courts, 800 Smithe Street, Vancouver, British Columbia V6Z 2E1, on Thursday, November 29th, 2012 at 9:45 in the forenoon or so soon thereafter as Counsel may be heard for the Orders set out in Part I below. *WMA*

Part 1: ORDERS SOUGHT

1. The mortgaged property which is the subject of this proceeding, located at 26123 – 126th Avenue in Maple Ridge, British Columbia, be sold out of this Court by being offered for sale, by private sale, free and clear of all encumbrances save and except the reservations, provisos, exceptions and conditions expressed in the original grant from the Crown;

ZoDW

2. the applicants (Respondents) have exclusive Conduct of the Sale and may forthwith list the Mortgaged Property for sale until further Order of this Court, and may pay to any real estate licensee or firm who may arrange a sale of the Mortgaged Property and premises a commission of not more than 7% of the first \$100,000 and 2½% of the balance of the gross selling price plus any HST payable from the proceeds of the sale;
3. the sale shall be subject to the approval of this Court unless otherwise agreed by all parties;
4. the Respondent Stewart Edward Irvine and any person or persons on their behalf, upon reasonable notice, do forthwith permit any duly authorized agent on behalf of the Respondents, Richter and Ho, to post signs on the Mortgaged Property, to inspect, appraise, or show to any prospective purchaser the Mortgaged Property and premises including the interior of the mortgaged property between the hours of 9:00 a.m. and 7:00 p.m. on any day of the week, except Sundays, statutory holidays, or such other day as this Court may Order;
5. the Respondent Stewart Edward Irvine do pay to the Respondents Carmel Yoko Richter and Sherwin Jack-Yen Ho the sum of One Hundred Fifteen thousand one hundred ninety-nine dollars and ninety-six cents (\$115,199.96) plus costs; and
6. the Petitioner be entitled to its costs of and incidental to this application;

Part 2: FACTUAL BASIS

1. The petition respondent Irvine resides at or near the mortgaged property;
2. The applicants/Respondents Richter and Ho, holders of the second mortgage, are of the understanding that Irvine has made no efforts to raise funds to update the (first or second) mortgage, nor has he made any efforts to refinance;
3. In the applicants' view, there is thinning equity for its (second) mortgage. The appraised value of the property has dropped since the June, 2012 appraised value, and therefore the applicants request Conduct of Sale;
4. The applicants propose to list the Mortgaged Property for sale with a real estate licensee on the Multiple Listing System and to instruct the real estate licensee to

market the subject premises diligently and to make his or her best efforts to obtain the best possible price by, among other things, offering the subject premises for sale by advertisement and exposing the property to all interest parties.

Part 3: LEGAL BASIS

1. The applicants, Respondents, will rely on Rule 21-7 of the Supreme Court Civil Rules and s. 15 of the *Law and Equity Act*, R.S.B.C. 1996, C. 253. The applicants will also rely on the case *CIBC v. Luckman* [1997] B.C.J. No. 1787.

Part 4: MATERIAL TO BE RELIED ON

1. Notice of Application, signed November 5, 2012;
2. Affidavit No. 2 of Carmel Yoko Richter and Jack-Yen Ho, sworn November 4th, 2012;
3. Petition, dated October 15, 2012;
4. Draft Order for Conduct of Sale;

The applicants estimate that the application will take twenty (20) minutes.

this matter is within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:

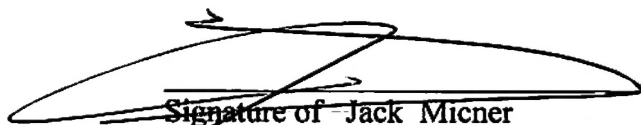
If you wish to receive notice of the time and date of the hearing or to respond to the application, you must

- a) file an application response in Form 33 within 5 days after the date of service of this Notice of Application or, if the application is brought under

Rule 9-7 of the Supreme Court Civil Rules, within 11 days after the date of service of this notice of application, and

- b) at least 2 days before the date set for the hearing of the application, serve on the applicant 2 copies, and on every other party one copy, of a filed copy of the application response and the other documents referred to in Rule 9-7(12) of the Supreme Court Civil Rules.

Dated: November 5, 2012



Signature of Jack Micner

☐ applicant
☒ Lawyer for applicant

To be completed by the Court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of this notice of application

☐ with the following variations and additional terms:

Dated: November , 2012.

Signature of

☐ Judge ☐ Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ document discovery
- ☐ oral examination for discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders
- ☐ experts
- ☒ other

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NOTICE OF APPLICATION

File no. 21903
Re: Richter/Ho ats Home Trust (FCL)

Attention: Jack Micner

Spry Hawkins Micner
Barrister & Solicitor
Attention: Jack Micner/ Tracey Taylor-Maki
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